

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST  
FOR REVIEW BY:

**ROBEN B. HALL**

Petitioner.

)  
)  
)  
)  
)  
)

CHARGE NO.: 2009CF1979  
EEOC NO.: 21BA90767  
ALS NO.: 10-0241

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Roben B. Hall's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CF1979; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following:

1. On January 9, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that on November 10, 2008, Wal-Mart Stores, Inc. ("Employer") discharged her from her position as an Overnight Stocker because of her physical disabilities, Traumatic Head Injury and Reflex Sympothetic Dystrophy (Counts A and B), her sexual orientation, homosexual (Count C), and in retaliation for having previously filed a charge of discrimination against the Employer on May 20, 2008 (Count D), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act") On March 3, 2010, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. On April 5, 2010, the Petitioner filed a timely Request. On May 12, 2010, the Petitioner filed a Reply to the Respondent's Response.
2. At all times relevant to the charge, the Employer had in place an Open Door Communications Policy ("Policy"). The Policy allowed employees to bring to the Employer's attention suggestions, observations, problems and concerns regarding the employee, a co-worker, or the Employer.

---

<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. The Employer also maintained a Coaching for Improvement Policy ("CIP"). The CIP stated that gross misconduct would not be tolerated. According to the CIP, an employee deemed to have engaged in gross misconduct would be subject to immediate discharge.
4. The Petitioner used the Employer's Policy on numerous occasions to complain that a female co-worker had inappropriately touched, stalked, and sexually harassed her.
5. The Employer investigated the Petitioner's complaints and determined that they were unsubstantiated. The Employer's Regional Human Resource Manager ("RHRM") also investigated the Petitioner's complaints and found them to be baseless.
6. On June 28, 2008, the RHRM warned the Petitioner to cease using the Employer's Policy in bad faith. The Employer further informed the Petitioner that if she continued to abuse the Employer's Policy, then, in accordance with the CIP, the Petitioner would be subject to discipline up to and including discharge.
7. On November 1, 2008, the Petitioner used the Policy on two more occasions to file a complaint against her female co-worker. As a result, the Employer determined that the Petitioner had again abused the Employer's Policy. The Employer further determined that the Petitioner had engaged in gross misconduct.
8. On November 10, 2008, the Employer discharged the Petitioner based on its determination that the Petitioner had engaged in gross misconduct.
9. In her charge, the Petitioner alleged she was discharged because of her physical disabilities, her sexual orientation, and in retaliation for having previously filed a charge of discrimination against the Employer on May 20, 2008.
10. In her Request, the Petitioner argues that the Employer did not provide any evidence that its Policy had been violated. The Petitioner further argues that the Employer had submitted questionable evidence regarding its discharge of other employees for gross misconduct. The Petitioner also asserts that the Employer did not conduct objective investigations into alleged employee misconduct.
11. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues there is no substantial evidence that the Employer was motivated by the Petitioner's disabilities, sexual orientation, or retaliation when it discharged the Petitioner.
12. In her Reply, the Petitioner argues that the Respondent made improper credibility determinations.

## **CONCLUSION**

The Commission concludes that the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

First, as to the Petitioner's disability and sexual orientation claims, there is no evidence sufficient to establish *prima facie* cases because there has been no evidence presented that the Employer failed to terminate a similarly situated non-disabled, non-heterosexual employee who had allegedly misused the Employer's Policy or who had otherwise engaged in gross misconduct. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> Dist. 1994).

Second, the Petitioner's retaliation claim was properly dismissed because there is insufficient evidence of a causal connection between the protected activity of May 20, 2008, and the Petitioner's discharge on November 10, 2008.

In order for the Commission to find a causal nexus between the protected activity and the Employer's adverse action, there must either be some direct evidence of retaliation; indirect evidence of retaliation, i.e., evidence that a similarly situated employee who had not engaged in a protected activity was treated more favorably than the Petitioner; or evidence that the time period between the protected activity and the adverse action was short enough to create an inference of "connectedness." See Mitchell and Local Union, 146, 20 Ill. HRC Rep. 101, 110-11 (1985); see also Guiseppe Scalera and Village of Oak Park, ALS No. 11112 (March 12, 2003).

In the Petitioner's case, there is neither direct nor indirect evidence of retaliation. Therefore, the Petitioner's retaliation claim rests solely on the fact that she was discharged six months after she filed a charge of discrimination against the Employer. The Commission has previously held that the passage of seven months between the protected activity and the adverse action was not a sufficiently brief period of time from which to infer a nexus. See Andre and Whiteshield County Board, CETA, 18 Ill. HRC. Rep. 159 (1985). Similarly, the Commission finds the passage of six months between the Petitioner's protected activity and the adverse action is not short enough to raise an inference of a nexus between the activities. Furthermore, any inference of a nexus between the Petitioner's protected activity and the Employer's adverse action is diminished by the fact that in June 2008, the Petitioner was put on notice that any further abuses of the Employer's Policy could result in her termination. Thereafter, the Employer took no adverse action against the Petitioner until November 2008, when she was once again found to have abused the Employer's Policy.

Finally, even if the evidence was sufficient to establish *prima facie* cases of the Petitioner's discrimination and retaliation claims, the Employer articulated a non-discriminatory and non-retaliatory reason for its actions, which was that the Petitioner had engaged in gross misconduct. There has been no evidence presented from which the Commission could determine that the Employer's articulated reason was a mere pretext for discrimination or retaliation. In the absence of any substantial evidence that the Employer's articulated reason for its actions were pretext for unlawful discrimination or retaliation, it is improper for the Commission to substitute its judgment for the business judgment of the Employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Wal-Mart Stores, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS	)	
	)	Entered this 12 <sup>th</sup> day of January 2011.
HUMAN RIGHTS COMMISSION	)	

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box